

Farm Credit Administration

§617.7610

information is necessary. Once FCA has received sufficient information, it must decide whether to issue a directive as originally proposed or as modified.

§617.7520 How does the FCA issue a directive and when will it be effective?

A distressed loan restructuring directive is effective immediately on receipt by the qualified lender, or on such later date as may be specified by FCA, and will remain effective and enforceable until it is stayed, modified, or terminated by FCA.

§617.7525 May FCA use other enforcement actions?

FCA may issue a distressed loan restructuring directive in addition to, or instead of, any other action allowed by law, including cease and desist proceedings, civil money penalties, or the granting or conditioning of any application or other requests by the System institution.

Subpart G—Right of First Refusal

§617.7600 What are the definitions used in this subpart?

In addition to the definitions in §617.7000, the following definitions apply to this subpart.

Acquired agricultural real estate or property means agricultural real estate acquired by a System institution as a result of a loan foreclosure or a voluntary conveyance by a borrower who, as determined by the institution, does not have the financial resources to avoid foreclosure.

Previous owner means:

(1) The prior record owner who was a borrower from a System institution and did not have the financial resources, as determined by the institution, to avoid foreclosure on acquired agricultural real estate; or

(2) The prior record owner who is not a borrower and whose acquired agricultural real estate was used as collateral for a loan to a System borrower.

System institution means a Farm Credit System institution, except a bank for cooperatives, which makes loans as defined in §617.7000.

§617.7605 How should System institutions document whether the borrower had the financial resources to avoid foreclosure?

The right of first refusal applies only to borrowers who did not have the financial resources to avoid foreclosure or voluntary conveyance. A System institution must clearly document in its files whether the borrower had the resources to avoid foreclosure or voluntary conveyance.

§617.7610 What should the System institution do when it decides to sell acquired agricultural real estate?

(a) Notify the previous owner,

(1) Within 15 days of the System institution's decision to sell acquired agricultural real estate, it must notify the previous owner, by certified mail, of the property's appraised fair market value as established by an accredited appraiser and of the previous owner's right to:

(i) Buy the property at the appraised fair market value, or

(ii) Offer to buy the property at a price less than the appraised value.

(2) That any offer must be received within 30 days of receipt of the notice.

(b) Act on an offer to buy the acquired agricultural real estate at the appraised value. Within 15 days after the receipt of the previous owner's offer to buy the acquired agricultural real estate at the appraised value, the System institution must accept the offer and sell the property to the previous owner if the offer was received within 30 days of the notice required in paragraph (a)(2) of this section.

(c) Act on an offer to buy the acquired agricultural real estate at less than the appraised value.

(1) The System institution must consider the offer if it was received within 30 days of the notice required in paragraph (a)(2) of this section.

(2) If the System institution accepts this offer, it must notify the previous owner of the decision and sell the acquired agricultural real estate to the previous owner within 15 days of receiving the offer to buy the acquired agricultural real estate at a value less than the appraised value.

(3) If the System institution rejects this offer, it must notify the previous

owner of the decision within 15 days of receiving the offer to buy the acquired agricultural real estate at a value less than the appraised value. The previous owner has 15 days from receipt of the notice to submit an offer to buy at such price or under such terms and conditions. The System institution may not sell the acquired agricultural real estate to any other person:

- (i) At a price equal to, or less than, that offered by the previous owner; or
- (ii) On different terms or conditions than those extended to the previous owner without first notifying the previous owner by certified mail and providing an opportunity to buy the property at such price or under such terms and conditions.

(d) For purposes of this section, financing by the System institution is not a term or condition of the sale of acquired agricultural real estate. A System institution is not required to provide financing to the previous owner for purchase of acquired agricultural real estate.

§617.7615 What should the System institution do when it decides to lease acquired agricultural real estate?

(a) Notify the previous owner,

(1) Within 15 days of the System institution's decision to lease acquired agricultural real estate, it must notify the previous owner, by certified mail, of the property's appraised rental value, as established by an accredited appraiser, and of the previous owner's right to:

- (i) Lease the property at a rate equivalent to the appraised rental value of the property, or
- (ii) Offer to lease the property at rate that is less than the appraised rental value of the property.

(2) That any offer must be received within 15 days of receipt of the notice.

(b) Act on an offer to lease the acquired agricultural real estate at a rate equivalent to the appraised rental value of the property.

(1) Within 15 days after receipt of such offer, the System institution may accept the offer to lease the property at the appraised rental value and lease the property to the previous owner, or

(2) Within 15 days after receipt of such offer, the System institution may

reject the offer to lease the property at the appraised rental value when the institution determines that the previous owner:

- (i) Does not have the resources available to conduct a successful farming or ranching operation; or
 - (ii) Cannot meet all the payments, terms, and conditions of such lease.
- (c) Act on an offer to lease the acquired agricultural real estate at a rate that is less than the appraised rental value of the property.

(1) The System institution must consider the offer to lease the property at a rate that is less than the appraised rental value of the property. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of the offer.

(2) If the System institution accepts the offer to lease the property at less than the appraised rental value, it must notify the previous owner and lease the property to the previous owner.

(3) If the institution rejects the offer, the System institution must notify the previous owner of this decision. The previous owner has 15 days after receipt of the notice in which to agree to lease the property at such rate or under such terms and conditions. The System institution may not lease the property to any other person:

- (i) At a rate equal to or less than that offered by the previous owner; or
- (ii) On different terms and conditions than those that were extended to the previous owner without first informing the previous owner by certified mail and providing an opportunity to lease the property at such rate or under such terms and conditions.

§617.7620 What should the System institution do when it decides to sell acquired agricultural real estate at a public auction?

System institutions electing to sell or lease acquired agricultural real estate or a portion of it through a public auction, competitive bidding process, or other similar public offering must:

(a) Notify the previous owner, by certified mail, of the availability of such property. The notice must contain the minimum amount, if any, required to